

**Commonwealth Senate Standing Rural and Regional Affairs and
Transport References Committee**

Inquiry into the integrity of the water market in the Murray-Darling Basin

NSW Government Submission

September 2017

Introduction

The NSW Government is pleased to make a submission to the Inquiry into the integrity of the water market in the Murray-Darling Basin (MDB). The NSW Government is committed to the maintaining the integrity of the water market in the MDB.

The NSW Minister for Regional Water, the Hon Niall Blair MLC, has written to his colleagues and counterparts in other Basin jurisdictions to reiterate the NSW Government's commitment to the MDB Plan and to keep them informed of the Government's actions to address and respond to the claims made in the ABC Four Corners report on 24 July 2017.

Information to address the Terms of Reference is below and further information is available in the Matthews *Independent investigation into NSW water management and compliance- Interim Report* (Matthews report, see **Attachment A**).

NSW Government responses to the Terms of Reference

- a) The allegations of theft and corruption in the management of water resources in the Murray-Darling Basin**
- b) The investigation and public disclosure by authorities, including the New South Wales Government and the Murray-Darling Basin Authority, of reported breaches within the Murray-Darling Basin, including the Barwon-Darling Water Sharing Plan**
- c) The actions of member states in responding to allegations of corruption and the potential undermining of the Murray-Darling Basin Plan**

The allegations made by the ABC Four Corners report of 24 July 2017 are serious and concerning for the NSW Government. In response to this, the NSW Government commissioned Mr Ken Matthews AO to conduct an independent investigation into water management in NSW. The Matthews report was released on 11 September 2017.

The investigation was asked to determine the facts and circumstances related to these allegations and assess whether the department's policies and procedures were complied with and if the department's actions were appropriate.

Testing the specific allegations about non-compliant or illegal irrigation activities will be the subject of other investigation processes and the NSW Government is unable to comment or speculate on alleged illegal activity at this time. However, the Mathews report found that allegations of breaches of licence conditions and water theft were not adequately investigated nor has there been appropriate compliance and enforcement action on these matters.

The Matthews report proposes a wide range of reform measures:

1. A Water Management Compliance Improvement Package, including
 - a) the creation of a new independent statutory Natural Resource Access Regulator governed by a three person board.
 - b) the consolidation of all compliance and enforcement functions for non-metropolitan water activities in NSW into the Department of Industry, together with a suite of measures to improve the performance and transparency of water management.
 - c) the introduction of a “no meter, no pump” policy for all large water users.
2. Policy and structural recommendations proposed for Basin-wide reforms, to strengthen and make more transparent the compliance framework, and the policies to best accommodate and manage environmental water.

The NSW Government has accepted the principles set out in the recommended Water Compliance Improvement Package and will develop a considered response.

d) The use of Commonwealth-owned environmental water for irrigation purposes, and the impact on Basin communities and the environment

The NSW Government remains committed to the MDB Plan and ensuring it is delivered in a way that balances economic, environmental and socio-economic concerns, and puts local communities front and centre.

Given the current investigations, the NSW Government is unable to comment on any alleged use of Commonwealth-owned environmental water for irrigation purposes.

The management of environmental water across the MDB is a difficult and complex issue. Resolving these issues will be central to the ongoing success of the MDB Plan and requires action across the whole MDB.

In NSW, Water Sharing Plans (WSPs) provide the framework within which all water use is planned and coordinated. WSPs specifically share the water resource in each valley, including a proportion of water to support the environmental needs of NSW riverine and wetland systems.

The NSW Department of Industry is responsible for ensuring the rules in WSPs that provide water for the environment (i.e. planned environmental water) are applied. The *Water Act 2007* (Cth) requires that the planning and management of environmental water in NSW must be consistent with the Basin Plan.

The NSW Office of Environment and Heritage (OEH) manages environmental water, including environmental water licences held by the NSW Government and planned environmental water under water sharing plans. OEH works with the Commonwealth Environmental Water Holder on the management of environmental water held by the Commonwealth Government.

Environmental water includes:

- planned environmental water allowances (or environmental contingency allowances) accrued through the regulated river WSPs; and
- environmental water licences arising from the purchase of entitlements by governments and the recovery of water savings from infrastructure projects.

Water is made available to planned environmental water allowances by rules described in the WSP relevant to that valley. These valley specific allowances have various size limits and rules on how and where they can be used, which are also specified in the relevant WSP.

The Matthews report draws attention to the complexity surrounding the management of environmental water and the need for a cooperative approach to solutions.

The Premier has recently written to the Chair of the MDB Authority to highlight the recommendations in the report, and reinforce the State's commitment to working with the MDB Authority and member states to improve the management of water resources. The NSW Minister for Regional Water has written to the Deputy Prime Minister to confirm our commitment to a triple-bottom line approach to water diversions in the Northern Basin. The NSW Government will continue to participate in the Northern Basin Review which is considering the management of environmental water its impacts on communities in Queensland and NSW.

e) The operation, expenditure and oversight of the Water for the Environment Special Account

Funds from the Commonwealth's Water for the Environment Special Account has been made available to NSW under a December 2015 funding agreement between the two Governments.

The agreement provides for NSW to develop constraints management strategy business cases for the relaxation of flow constraints in the Murray, Murrumbidgee and Gwydir valleys. Under this agreement, up to \$2.4 million was made available from the Commonwealth's Water for the Environment Special Account.

A constraint project considers the physical barrier or impediment on the delivery or movement of water, which impacts the amount of water that can be delivered.

NSW received the first milestone payment of \$2 million from the Commonwealth in March 2016. This amount included \$1.1 million to engage the MDBA to provide hydraulic mapping and monitoring, input into costings and assistance with stakeholder consultation.

The funding agreement is part of the second phase Constraints Management Strategy 2013-2024, agreed to by the MDB Ministerial Council. This strategy is an important component of the Intergovernmental Agreement on Implementing Water Reform in the MDB. The business cases assessed the feasibility of the potential relaxation of physical flow constraints for potential adjustments to the Sustainable Diversion Limits in the MDB Plan.

f) Any other related matters.

The NSW Government is committed to developing strong governance and institutional arrangements to ensure legally compliant water use in NSW.

Prior to 1 July 2016, DPI Water was responsible for ensuring compliance with its water resource and water market rules. On 1 July 2016 the Transformation Project came into effect. This Project was part of the bulk water reforms in NSW, which aimed to increase operational efficiencies and reduce duplication between state water entities.

Accordingly, on 1 July 2016 general licensing functions (excluding licensing of water corporations, major utilities and State Significant Developments) were moved from DPI Water to WaterNSW, a state owned corporation constituted under the *Water NSW Act 2014*. WaterNSW operates under an Operating Licence issued and monitored by the NSW Independent Pricing and Regulatory Tribunal.

In addition to the transfer of licensing and other functions, each entity assumed responsibility for ensuring compliance with their respective licensing functions.

The Matthews report recommended that compliance and enforcement functions be consolidated back into the Department of Industry, governed by a new Natural Resource Access Regulator, which would operate at arm's length from both WaterNSW and DPI Water. As Mr Matthews notes this would result in a one-stop-shop for compliance and enforcement matters within the Department, with WaterNSW keeping customer service functions, including meter reading and billing.

Other key recommendations in the Matthews report are:

- Public consultation on a suite of transparency and performance improvement measures impacting on water users; and
- The adoption and implementation of new monitoring and compliance techniques and technologies such as remote sensing of crop growth and water holdings, and back to base and remote meter reading and telemetry.

The detailed recommendations are available in the attached Matthews report and include the creation of an independent three person board to govern the regulator and to move the enforcement teams from WaterNSW to this new division. These recommendations have been accepted in principle and the proposals are being considered by the NSW Government.